California High-Speed Rail Authority

RFP No.: HSR 13-57

Request for Proposal for Design-Build Services for Construction Package 2-3

Book II, Part B.2 – Southern California Edison Master Agreement

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

MASTER AGREEMENT

BETWEEN
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
AND
SOUTHERN CALIFORNIA EDISON

PARTIES:

The State of California, acting by and through California High-Speed Rail Authority ("Authority"), which term Authority includes its officers, agents, contractors, successors and assigns and other public agencies performing projects in connection with California's High-Speed Rail Project ("HSR Project"), and Southern California Edison ("Owner"), which term "Owner" includes its officers, agents, contractors, successors and assigns, hereby agree as follows:

RECITALS:

A. Owner owns, operates or maintains, in the State of California, Facilities as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission.

B. Authority is responsible for the HSR Project, as defined herein, and from time to time the HSR Project requires the Relocation of Owner's Facilities.

C. Authority and Owner desire to enter into a contract establishing the terms and conditions to perform the above-referenced Relocations.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this master agreement ("Master Agreement") and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and Owner agree as follows:

1. The Master Agreement shall govern exclusively the obligations of Authority and Owner in regard to Facility Work described herein in lieu of determination under any other laws, and prior contracts and agreements which would be applicable to this work. The Master Agreement shall apply throughout the State of California to the Authority's HSR Project. As used in this Master Agreement, the following terms have the following meanings:

    (A) "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work or any other work.

    (B) "Facility" or "Facilities" means any Utility owned and operated by Owner.

    (C) "Facility Work" means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation,

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

DRAFT

demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Builts, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities in conjunction with the HSR Project.

(D) "High-Speed Rail Property" means any real property or an interest therein, including any right-of-way, previously or hereafter acquired by the Authority.

(E) "HSR Project" means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code.

(F) "Notice to Owner" means a formal written notice to relocate.

(G) "Relocation" means removal, relocation, abandonment, protection or any other rearrangement of Owner's Facility as ordered and approved by Authority to accommodate Authority's HSR Project. Relocation shall include, but not be limited to: preparation and submission by Owner and approval by Authority of relocation plans or drawings sufficiently engineered to allow construction of the ordered Relocation, and a detailed estimate by Owner of the actual and necessary cost of the ordered Relocation.

(H) "Utility" means Owner's electric and gas Facilities, and communications associated therewith. The necessary appurtenances to each Facility shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HSR Project, the term "Utility" or "utility" specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

(I) "Wasted Work" means design or construction work performed by Owner, upon written direction from the Authority, for a Relocation rendered useless or unnecessary as a result of the Authority's cancellation and/or scope of changes as agreed by both parties of the HSR Project. This term includes any other design or construction work that is needed to

DRAFT

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

(J) "Betterment" means the difference in cost between the intended Relocation of Owner's Facility proposed and submitted by Owner for Authority's approval and a Relocation which would provide the Owner with equivalent substitute Facilities for those Facilities requiring Relocation to accommodate Authority's project. As employed herein, betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, or regulatory requirement.

(K) "Party" refers to the Authority or the Owner, as the context may require and "Parties" means the Authority and the Owner, collectively.

(L) "Private Right-of-Way of Owner" means a property right held by Owner in the form of either a recorded or fully executed deed in the usual form or other valid instrument recorded or fully executed and conveying a permanent property right for the Facility within the HSR Project right-of-way that is subject to a recorded Joint Use Agreement (JUA) or Consent To Common Use Agreement (CCUA).

(M) "Railroad Right-of-Way" means the right-of-way of any rail line registered with the California Public Utilities Commission, except for High-Speed Rail right-of-way.

(N) "Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

(O) "Utility Agreement" means an agreement between the Authority and the Owner, authorizing and providing for the performance of specific work and/or services and/or the purchase of materials and equipment.

2. The work to be performed under the Master Agreement shall be all work necessary to accomplish Relocation of Owner's existing Facilities as necessitated by Authority's HSR Project.

3. All work under the Master Agreement shall be preceded by the issuance of a written Notice to Owner by Authority.

4. Unless otherwise agreed to, liability for the cost of Facility Work shall be determined as follows:

(A) When the Authority requires Owner to remove any Facility lawfully maintained in any High-Speed Rail Property to a location entirely outside High-Speed Rail Property, the Authority shall pay the reasonable and necessary cost of the removal. This includes both the cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.

(B) When the Authority requires Owner to remove any Facility lawfully maintained outside High-Speed Rail Property to another location entirely outside High-Speed Rail Property,

DRAFT

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

the Authority shall pay the reasonable and necessary cost of removal. This includes the cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.

(C) If Authority requires the Relocation within its right-of-way of any Facility more than once during a ten-year period, Authority shall pay the cost of that second Relocation, and any subsequent additional Relocations of that Facility within such ten-year period on any subsequent or additional project.

(D) The Owner shall pay the reasonable and necessary cost of removal when the Relocation of a Facility from one point in High-Speed Rail Property to another point in that property, including Relocation in any service road of the High-Speed Rail Property or from one point of crossing of the High-Speed Rail Property to another reasonable point of crossing. This includes the cost of removal and the cost of Relocation to another point in High-Speed Rail Property.

(E) When the Authority requires a privately owned Facility to relocate within a High-Speed Rail Property any Facility, other than one used solely to supply water, which Facility is lawfully maintained in any High-Speed Rail Property that was not used for high-speed rail purposes at the time the Facility was originally installed, and it is established by the Owner that the Facility is not under express contractual obligation to relocate the Facility at its own expense, the Authority shall pay the cost of the Relocation.

(F) A permit containing a contractual obligation that was accepted by the Owner for maintenance or minor improvement of the Facility after the property became High-Speed Rail Property shall not constitute a contractual obligation to relocate a Facility at its own expense within the meaning of this section.

Nevertheless, Owner will be liable for Facility Work where:

(A) Facility Work is a Betterment; or

(B) The Owner is unable to produce documentation of Private Right-of-Way of Owner where its Facility is located.

5. Cost of Relocation includes the actual and necessary cost of all engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in the Relocation, except:

(A) The Authority shall be entitled to credits as follows:

i. The amount of any Betterment to the Facility resulting from such Relocation.

ii. The salvage value of any materials or parts salvaged and retained by Owner.

DRAFT

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

iii. If a new Facility or portion thereof is constructed to accomplish such Relocation, an amount bearing the same proportion to the original cost of the displaced facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of facility}}{\text{Normal expected life}} \times \text{Original cost}$$

(B) A credit shall not be allowed against any portion of the cost that is otherwise chargeable to Owner.

6. The Master Agreement does not apply to "Service" facilities for which Authority is the regularly billed sole customer for the commodity provided, or as defined by California Public Utilities Commission. Where Owner is the owner of a part of, or of a present undivided part interest in, any Facility, the Master Agreement shall apply to the extent of such interest.

7. For each Relocation, Authority and Owner shall enter into a project specific Utility Agreement setting forth, among other things, the Relocation arrangements between the parties regarding cost apportionment, billing, payment, documentation, documentation retention, and accounting.

   When all or a portion of the Facility Work is to be performed by the Owner, the Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to: (i) perform work with its own forces, or (ii) cause the work to be performed by a contractor, employed by Owner pursuant to a written contract, or (iii) cause the work to be performed through a contract with a qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

   Upon the issuance of a Notice to Owner, or as otherwise agreed upon in the specific Utility Agreement, the Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's reasonable schedule.

8. Upon discovery of Hazardous Material in connection with the Relocation, both Owner and Authority shall immediately confer to explore all reasonable alternatives and agree on a course of action, and Owner shall immediately reschedule the work to complete the Relocation in accordance with Authority's reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

   (A) Authority will pay, in its entirety, those costs for additional necessary effort undertaken by Owner to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such conditions are attributable to Owner's existing installation or operation.

DRAFT

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

(B) Each Party to the Master Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

9. Whenever Owner's affected Facilities will remain within the existing Private Right-of-Way of Owner, and these Facilities will fall within the right-of-way of the HSR Project under the jurisdiction of the Authority, Authority and Owner shall jointly execute an agreement for common use of the subject area which agreement shall also confirm any prior rights held by Owner in said Private Right-of Way of Owner.

   Whenever Owner's affected Facilities will be relocated from the existing Private Right-of-Way of Owner to a new location that falls outside such existing Private Right-of-Way of Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities as will correspond to the existing Private Right-of-Way of Owner. For such Relocations, the Authority shall issue, or cause to be issued, to Owner, without charge to Owner or credit to Authority, appropriate replacement rights in the new location mutually acceptable to both Authority and Owner for those rights previously held by Owner in its existing Private Right-of-Way. In discharge of Authority's obligations under this Paragraph, in the event that the new location falls within the right-of-way of the HSR Project under the jurisdiction of Authority, Authority and Owner shall jointly execute an agreement for joint use of said new area which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner. In consideration for these replacement rights being issued by Authority, Owner shall subsequently convey to Authority, or its nominee, within High-Speed Rail Property, all of its corresponding right, title and interest within Owner's existing Private Right-of Way so vacated.

   If the existing Private Right-of-Way of Owner includes fee title, Authority shall acquire from Owner, for just compensation under State law, those property rights required by Authority for the HSR Project by separate transaction, leaving to Owner those remaining property rights appropriate for the placement and operation of Owner’s Facilities in the Private Right-of-Way of Owner.

   If any replacement real property rights are required in Railroad Right-of-Way, then the Authority will make reasonable efforts to obtain those rights for the Owner. Nevertheless, if Authority cannot obtain those replacement real property rights Owner shall obtain those rights.

10. The Master Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties. None of the rights, obligations or interests of either Party under the Master Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other Party, not to be unreasonably withheld, in the form of a formal written amendment, except that either Party may assign the Master Agreement to its successor or any entity acquiring all or substantially all of such Party’s assets.

11. The Master Agreement may be amended, changed or altered by mutual consent of the parties in writing.

DRAFT

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

12. Either Party, upon sixth (6) month's written notice, may terminate the Master Agreement, except that, notwithstanding that termination, the provisions of the Master Agreement shall remain in full force and effect with respect to any Relocation of Facilities required under a Notice to Owner issued prior to the Master Agreement termination.

13. Time shall be of the essence of the Master Agreement.

14. In the event that the Authority breaches any provision of the Master Agreement, then in addition to any other remedies which are otherwise provided for in the Master Agreement or by law, the Owner may pursue a claim for damages.

    In the event that the Owner breaches any provision of the Master Agreement, then in addition to any other remedies which are otherwise provided for in the Master Agreement or by law, the Authority may exercise one or more of the following options:

    (A) Pursue a claim for damages suffered by the Authority.

    (B) Perform any work with its own forces or through Authority's Contractor and seek repayment for the cost thereof.

15. No State or Federal funds or resources are allocated or encumbered as against the Master Agreement and Authority's obligations and duties expressed herein are conditioned upon sufficient funds being made available to the Authority by the California State Legislature or the United States Government for the purpose of the HSR Project.

    Parties agree that Utility Agreement(s) and other agreements requiring payment from the Authority may be subject to additional State and Federal requirements.

16. The Master Agreement may be amended, changed or altered by mutual consent of the Parties in writing.

17. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

18. The Master Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations.

19. Owner agrees that the Authority, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Master Agreement. Owner agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Owner agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Owner agrees to include a similar right of the State to

DRAFT

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014

audit records and interview staff in any subcontract related to performance of the Master Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

IN WITNESS WHEREOF, the PARTIES hereto have executed the Master Agreement effective the last day and year written below.

SOUTHERN CALIFORNIA EDISON

BY: _____ DATE: _____

NAME: Kevin M. Payne

ITS: Vice President

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

BY: _____ DATE: _____

NAME: Jeff Morales

ITS: Chief Executive Officer

DRAFT

RFP No.: HSR 13-57 - Addendum No. 3 - 07/31/2014